

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of

Safety-Kleen Systems, Inc.,

Linden, New Jersey,

Respondent.

Docket No. CERCLA-02-2022-2022

CONSENT AGREEMENT AND
FINAL ORDER

September 30, 2022 @ 4:33pm
USEPA – Region II
Regional Hearing Clerk

PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), as amended, 42 U.S.C. § 11045. The Complainant in this action is the Director of the Superfund and Emergency Management Division of the United States Environmental Protection Agency, Region 2 (“EPA”), who has been delegated the authority to institute this action. Respondent is Safety-Kleen Systems, Inc. (“Respondent”).

2. Pursuant to Section 22.13(b) of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CAFO pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

3. It has been agreed by the parties that settling this matter by entering into this Consent Agreement, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), is an appropriate means of resolving specified claims against Respondent without litigation.

STATUTORY AND REGULATORY BACKGROUND

4. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility, as defined under CERCLA, to immediately notify the National Response Center (“NRC”), as soon as he or she has knowledge of any release (other than a federally permitted release) of a hazardous substance from the facility in a quantity equal to or greater than the reportable quantity. The implementing regulations for CERCLA Section 103 requirements are found at 40 C.F.R. Part 302.

5. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to immediately provide notice, as described in Section 304(b) of

EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance occurs from a facility at which hazardous chemicals are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

6. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), requires the owner or operator of a facility to give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, to the community emergency coordinator for the local emergency planning committee (“LEPC”) for any area likely to be affected by the release and to the state emergency response commission (“SERC”) of any state likely to be affected by a release.

7. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), further requires an owner or operator to provide a written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel, and the local community. A delay or failure to notify could seriously hamper the government's response to an emergency and pose serious threats to human health and the environment.

9. The EPCRA Section 304 requirements for emergency notification of chemical releases and written follow-up emergency notices are found at 40 C.F.R. Part 355.

10. Under 40 C.F.R. § 355.42(a), the immediate emergency release notification information and the written follow-up notification required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b), shall be provided to the community emergency coordinator for the LEPC for any area likely to be affected by the release (if there is no LEPC, notify the relevant local emergency response personnel) and to the SERC of any State likely to be affected by the release.

11. Under 40 C.F.R. § 355.43, the written follow-up emergency notice (or notices, as more information becomes available) required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b), must be provided as soon as practicable after the release.

12. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), provide for the assessment of penalties for violations of Section 103 of CERCLA and Section 304 of EPCRA, respectively.

FINDINGS OF FACT

13. At all times relevant to this Consent Agreement, Respondent was the owner and/or operator of a facility, located at 1200 Sylvan Street, Linden, New Jersey (the “Facility”).

14. At approximately 10:50 p.m. on May 8, 2020, a release of ammonia, acetonitrile, and acetamide to the environment occurred at the Facility (the "Release"). A reaction in an outdoor storage tank at the Facility containing an acetonitrile mixture resulted in the release of ammonia, acetonitrile, and acetamide to the air through the vents on top of the tank.

15. Respondent immediately contacted the City of Linden Fire Department regarding the Release.

16. Respondent started performing calculations on May 11, 2020 at approximately 8:00 a.m. to determine the quantities of hazardous substances involved in the Release, which is more than 2 days and 9 hours after the Release.

17. On May 12, 2020 at 11:58 a.m., Respondent reported the Release to the New Jersey Department of Environmental Protection ("NJDEP"), which was approximately 84 hours after the Release.

18. Respondent completed hazardous substance calculations for the Release as of May 12, 2020 at approximately 10:12 p.m. and determined that the release of ammonia from the Facility was 237 pounds, which is greater than the reportable quantity of 100 pounds.

19. On May 13, 2020 at 5:07 p.m., Respondent provided a written notification to the NJDEP updating its prior report to include the calculations of hazardous substances involved in the Release and reported that the emission of ammonia exceeded 100 pounds. The updated report indicated that the vapor released contained 4,774 pounds of acetonitrile, 15 pounds of acetamide, 3,247 pounds of water, and 237 pounds of ammonia.

20. On May 14, 2020 at 9:59 a.m., Respondent reported the Release to the National Response Center ("NRC") indicating a release of 237 pounds of anhydrous ammonia and 4,774 pounds of acetonitrile at the Facility into the atmosphere. This was approximately 131 hours after the Release and approximately 35 hours after Respondent completed the calculations for the Release and determined that the amount of ammonia released exceeded the reportable quantity for ammonia.

21. On May 21, 2020, May 22, 2020, and June 5, 2020, Respondent submitted written reports related to the Release to NJDEP.

22. By letter dated June 9, 2020, EPA issued an information request letter to Respondent regarding the Release.

23. By letter dated August 12, 2020, Respondent submitted a response to EPA's information request letter.

EPA CONCLUSIONS OF LAW

24. Respondent is, and at all times relevant to this Consent Agreement was, a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

25. At all times relevant to this Consent Agreement, Respondent was the owner and operator of the Facility, which is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

26. At all times relevant to this Consent Agreement, the Facility consisted of buildings, equipment, structures, and other stationary items which were located on a single site or on contiguous or adjacent sites, and which were owned or operated by the same person (or by any person which controlled, is controlled by, or under common control with, such person).

27. At all times relevant to this Consent Agreement, Respondent produced, used, or stored ammonia at the Facility.

28. Ammonia (CAS# 7664-41-7) is a “hazardous substance” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and as listed in 40 C.F.R. Part 302, Table 302.4. The reportable quantity for ammonia is 100 pounds, as set forth in 40 C.F.R. Part 302, Table 302.4.

29. Ammonia is an “extremely hazardous substance” as defined in Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2), and listed in 40 C.F.R. Part 355, Appendices A and B.

30. The Release was a “release” as defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8). The Release was not a federally permitted release, as defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

31. Respondent had knowledge that the Release was equal to or greater than the reportable quantity of 100 pounds for ammonia on May 12, 2020 at approximately 10:12 p.m.

32. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

33. The Release was likely to affect New Jersey.

34. The Release was likely to affect the City of Linden, New Jersey.

35. At all times relevant to this Consent Agreement, NJDEP was the SERC for New Jersey under Section 301 (a) of EPCRA, 42 U.S.C. § 11001(a).

36. At all times relevant to this Consent Agreement, the City of Linden Office of

Emergency Management was the community emergency coordinator for the LEPC for Linden, New Jersey under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

37. Respondent failed to immediately notify the NRC upon knowledge that the Release exceeded the reportable quantity for ammonia. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

38. Respondent failed to immediately notify the SERC that the Release exceeded the reportable quantity for ammonia. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), and is therefore subject to the assessment of penalties under Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

39. Respondent's failure to provide a written follow-up emergency notice regarding the Release to the LEPC of Linden, New Jersey as soon as practicable after the Release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and is therefore subject to the assessment of penalties under Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2).

CONSENT AGREEMENT

40. Based upon the foregoing, and pursuant to Section 109 of CERCLA and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22), Complainant and Respondent hereby agree on the following provisions.

41. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent (a) admits the jurisdictional basis for this matter, (b) admits the Findings of Fact set forth above, (c) consents to the assessment of the civil penalty set forth below, (d) consents to the issuance of the attached Final Order, and (e) waives its right to contest the allegations and its right to appeal the attached Final Order.

42. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

43. Respondent agrees to pay a civil penalty in the total amount of (\$44,200.00).

Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,733.33 civil penalty for the CERCLA violation. Respondent must pay the penalty by submitting an electronic funds transfer, payable to "EPA Hazardous Substance Superfund". Instructions for electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) are at <https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov>. Follow the online directions for an electronic funds transfer ("EFT").

Within 30 days after the effective date of this CAFO, Respondent must pay a \$29,466.67 penalty for the EPCRA violations. Respondent must pay the penalty by submitting an electronic funds transfer, payable to "Treasurer, United States of America". Instructions for electronic deposit

for payment (Vendor Express, Fedwire, Pay.gov) are at <https://www.epa.gov/financial/additional-instructions-making-payments-epa#Pay.gov>. Follow the online directions for an electronic funds transfer (“EFT”).

44. Respondent shall promptly furnish reasonable proof that such payment has been made to:

Ricky C. Ng
Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region 2, Office of Regional Counsel
290 Broadway, 17th Floor
New York, NY 10007
ng.ricky@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007
maples.karen@epa.gov.

45. The penalties specified in Paragraph 43, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

46. If Respondent fails to make full and complete payment of the civil penalty that it is required to pay by this Consent Agreement, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for collection.

- a. Interest. If Respondent fails to make payment, or makes partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment due date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment due date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed CERCLA penalty on time, in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States’ enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and Respondent also agrees to pay a 6% per annum penalty which will also be applied on any principal amount not paid within ninety (90) days of the due date.

General Provisions

47. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full settlement of Respondent's alleged violations of CERCLA and EPCRA set forth above in the Findings of Fact and EPA Conclusions of Law.

48. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Except for the alleged violations resolved herein, compliance with this Consent Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

49. Respondent's full compliance with this Consent Agreement shall resolve Respondent's liability for federal civil penalties for the violation and facts described above in the Findings of Fact and EPA Conclusions of Law. This Consent Agreement shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

50. This Consent Agreement and any provision herein is not intended to be an admission of liability in any adjudicatory or administrative proceeding except in an action, suit, or proceeding to enforce this Consent Agreement or any of its terms and conditions.

51. Respondent explicitly waives any right to request a hearing as to the matters addressed herein and/or contest any allegations in this Consent Agreement and explicitly waives any right to appeal the attached Final Order.

52. Each party hereto shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement.

53. This Consent Agreement shall be binding on Respondent and its successors and assignees.

54. Each of the undersigned representatives to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement and to bind that party to it.

55. Respondent consents to service upon Respondent by electronic means, including by email, sent to the electronic addresses provided by Respondent in the Acknowledgement of Consent to Electronic Service, which Respondent represents is his or her electronic address for purposes of service, of a copy of this Consent Agreement by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

In the Matter of Safety-Kleen Systems, Inc.,
Docket Number CERCLA-02-2022-2022

For Respondent
Safety-Kleen Systems, Inc.

William F. Connors

Digitally signed by William F. Connors
DN: cn=William F. Connors, o=Clean Harbors
Environmental Services, Inc., ou=Compliance,
email=wconnorsw@cleanharbors.com, c=US
Date: 2022.09.26 16:23:40 -0400

Date: 9/26/2022

Signature

William F. Connors

Name (Printed or Typed)

Sr. Vice President, Compliance

Title (Printed or Typed)

wconnorsw@cleanharbors.com

Email Address (Printed or Typed)

In the Matter of Safety-Kleen Systems, Inc.,
Docket Number CERCLA-02-2022-2022

For Complainant
U.S. Environmental Protection Agency, Region 2

Pat Evangelista Digitally signed by Pat
Evangelista
Date: 2022.09.28 13:09:14 -04'00'

Date: 9/28/2022

Pat Evangelista, Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2

In the Matter of Safety-Kleen Systems, Inc.,
Docket Number CERCLA-02-2022-2022

FINAL ORDER

As Regional Administrator of the EPA, Region 2, I ratify the foregoing Consent Agreement. The Consent Agreement, entered into by the Complainant and Respondent to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York.

SO ORDERED.



Lisa F. Garcia
Regional Administrator
U.S. Environmental Protection
Agency – Region 2
290 Broadway
New York, NY 10007-1866

Date: 9/30/2022

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of

Safety-Kleen Systems, Inc.,

Linden, New Jersey,

Respondent.

Docket No. CERCLA-02-2022-2022

**ACKNOWLEDGEMENT OF CONSENT TO
ELECTRONIC SERVICE**

This is to acknowledge Respondent's consent to service by electronic means, including by email, of the fully executed Consent Agreement and Final Order to the electronic address below:

Safety-Kleen Systems, Inc.
c/o Timmery A. Fitzpatrick, Esq.
fitzpatrick.timmery@cleanharbors.com

Respondent represents that the electronic address provided above is Respondent's email address for purposes of service.

For Respondent
Safety-Kleen Systems, Inc.

William F. Connors

Digitally signed by William F. Connors
DN: cn=William F. Connors, o=Clean Harbors
Environmental Services, Inc., ou=Compliance,
email=f.connorsw@cleanharbors.com, c=US
Date: 2022.09.28 12:07:22 -0400

Signature

Date: 9/26/2022

William F. Connors

Name (Printed or Typed)

Sr. Vice President, Compliance

Title (Printed or Typed)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of

Safety-Kleen Systems, Inc.,

Linden, New Jersey,

Respondent.

Docket No. CERCLA-02-2022-2022

CERTIFICATE OF SERVICE

This is to certify that I have this day caused (or am causing) to be sent the foregoing fully executed Consent Agreement and Final Order electronically to the respective email addressees below:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866
Maples.Karen@epa.gov

Safety-Kleen Systems, Inc.
c/o Timmery A. Fitzpatrick, Esq.
fitzpatrick.timmery@cleanharbors.com

Dated: 9/30/2022
New York, New York

Ng, Ricky Digitally signed by Ng, Ricky
Date: 2022.09.30 15:27:56 -04'00'